

INTERIM REPORT NO. 20

**KPBS ABROGATED ITS DUTY TO MAINTAIN
OBJECTIVITY AND BALANCE IN ITS LOCAL PUBLIC
AFFAIRS TELEVISION PROGRAMMING BY
CANCELLING THE *FULL FOCUS* PROGRAM**

**REPORT OF THE
SAN DIEGO CITY ATTORNEY**

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I. INTRODUCTION

On 1 August 2007 San Diego public broadcasting station KPBS announced that it was canceling the news and public affairs program *Full Focus*. After the announcement, San Diego City Attorney Michael Aguirre was contacted by a San Diego citizen who had contributed to KPBS and was concerned that, due to the cancellation of *Full Focus*, the station was failing to fulfill its requirements of objectivity and balance as a member station of the Public Broadcasting System (“PBS”). In response, the City Attorney sought station records under the California Public Records Act. This report examines the public interest issues raised by the *Full Focus* cancellation.¹

A. HISTORY OF KPBS

KPBS is a broadcast station organized and owned by San Diego State University. The station broadcasts on the radio using the call sign KPBS-FM and on television using the call sign KPBS-TV. KPBS-TV started operations in 1967. The television station originally was licensed as KEBS—the call sign was changed to KPBS in 1970. KPBS-FM began broadcasting in 1960; it initially also used the call sign KEBS.

The Federal Communications Commission (“FCC”) licenses radio and television stations. Licenses are awarded for eight-year periods. The FCC renewed the license for KPBS-TV on 30 November 2006. The license will expire (unless renewed) in 2014.²

KPBS receives financial support through contributions from members of the public, including individuals and companies.³ It is eligible to receive grants from the

¹ This report is based, in part, on public records released by KPBS and San Diego State University as a result of public records requests made by the Office of the City Attorney on 24 August 2007, 29 August 2007 and 11 September 2007. See Exhibit 1 for copies of the requests.

² See station information at the FCC’s website: http://fjallfoss.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_det.pl?Facility_id=6124

Corporation for Public Broadcasting (as described more fully in Section IV of this report). KPBS is a PBS member station. PBS member stations are America's public television stations.

B. PBS EDITORIAL STANDARDS AND POLICIES

PBS is a private, nonprofit corporation that was created in 1969. It has 168 noncommercial, educational licensees that operate 355 member stations.⁴ It promulgates a set of "Editorial Standards and Policies." PBS adopted its most recent "Editorial Standards and Policies" in 2005.⁵ Those policies call for content to be objective and balanced. Specifically, the policies state:

PBS seeks to present, over time, content that addresses a broad range of subjects from a variety of viewpoints. PBS may, however, choose to consider not only the extent to which the content contributes to balance overall, but also the extent to which specific content is fairly presented in light of available evidence.⁶

The cancellation of the KPBS television program *Full Focus* calls into question whether KPBS, as a member station of PBS, is adhering to the Editorial Standards and Policies that PBS has put into place. Cancellation of the program effectively eliminates presentation of a "variety of viewpoints" and prevents a balanced view of local issues from being aired.

II. CANCELLATION OF *FULL FOCUS*

As stated above, on 1 August 2007 KPBS cancelled the news and public affairs program *Full Focus*. According to the Mission Statement for *Full Focus* on the KPBS

³ The top twenty underwriters for KPBS during 2006 are listed on the attached Exhibit 2.

⁴ http://www.pbs.org/aboutpbs/aboutpbs_corp.html

⁵ See a copy of the PBS "Editorial Standards and Policies" at Exhibit 3.

⁶ See Exhibit 3 or the PBS link: http://www.pbs.org/aboutpbs/aboutpbs_standards.html

website, the program, which aired five days a week, explored issues with “newsmakers, community leaders and others with important views,” and contributed “to the public dialogue, inform[ed] the community’s agenda, and offer[ed] solutions to problems.”⁷ The program originally aired in April 2000. In a press release dated 1 August 2007, Doug Myrland, KPBS General Manager, stated “the new fiscal year forced KPBS management to closely examine each program and project within the KPBS organization. It’s important that we spend our financial resources wisely and while both activities⁸ had elements of success in the past, trends indicate their future potential for audience and revenue growth is minimal.”⁹

A memorandum dated 28 August 2007 from Doug Myrland to Dianne Lovell, Director of Human Resources and Legal Affairs for the San Diego State University Research Foundation, explained the *Full Focus* cancellation this way: “Despite five years of investment and hundreds of broadcasts, [*Full Focus*] has failed to attract even a minimally acceptable audience and only one outside funding source which covered just 15% of the program’s expenses. While producing local television programs is a fundamental part of our mission, after five years of marginal performance it is obvious that we need to reassess and find other program offerings. While the program is on daily, resulting in many hours produced each year, the cost for those hours of programming (when measured along with the small audience) made the cost per viewer reached very high compared to other programs on KPBS-TV.”¹⁰

⁷ See http://www.kpbs.org/tv/full_focus/about

⁸ The other program cancelled was *A Way With Words*.

⁹ See Exhibit 4, 1 August 2007 KPBS press release.

¹⁰ See Exhibit 5, 28 August 2007 memorandum from Doug Myrland to Dianne Lovell, Director of Human Resources and Legal Affairs for the San Diego State University Research Foundation.

Before sending his 28 August 2007 memorandum, Doug Myrland commented, on 3 August 2007, on the cancellation of *Full Focus*. On the KPBS “Off Mic” webpage, in response to an article written by Gloria Penner, former *Full Focus* host, titled “Goodbye *Full Focus*-- We’re Sorry to See You Go,” Myrland wrote: “This process [of canceling *Full Focus*] doesn’t need to be ‘transparent.’ We aren’t elected officials—every budget line item and every personnel decision and every bit of information we collect is not everybody else’s business. Just because you give a contribution or pay taxes doesn’t give you the right to decide—or even influence—what goes on the air and what doesn’t.”¹¹

Although the Office of the City Attorney made a public records request asking for information to validate Mr. Myrland’s explanation for the cancellation of *Full Focus*, as of the date of this report, KPBS has not provided such documents. The San Diego City Attorney’s Office will provide any additional information received from KPBS to the public in later reports.

III. EDITORS ROUNDTABLE TELEVISION BROADCASTS

After the cancellation of *Full Focus*, the sole remaining KPBS program that features local public issues is *Editors Roundtable*. However, *Editors Roundtable* is only broadcast once a week. *Editors Roundtable* is a commentary program not subject to the same requirements of balance and diversity as *Full Focus*. It is broadcast on KPBS radio and not on KPBS-TV. However, the radio program is videotaped and, through an agreement with Cox Communications, select programs are broadcast on cable television Channel 4. According to a 12 July 2006 e-mail from KPBS Producer/Program

¹¹ See <http://www.kpbs.org/blogs/offmic/?p=28&cp=4#comments>

Coordinator Carla Conner to Deborah Davis-Gillespie, Programming Manager for Channel 4 San Diego, KPBS has “not had a written agreement [with Cox] in several years.”¹²

The *Editors Roundtable* programs broadcast on Channel 4 are, for the most part, limited to appearances by guest media commentators Bob Kittle, editorial page editor of the *San Diego Union-Tribune*; John Warren, editor and publisher of *San Diego Voice & Viewpoint*; and Tim McClain, editor of *San Diego Metropolitan Magazine*.¹³ Those three individuals appear, for the most part, every other week on the radio version of *Editors Roundtable*.¹⁴ The weeks that Kittle, Warren and McClain do not appear on the program, representatives of San Diego publications other than the *San Diego Union-Tribune* frequently appear.

Recent e-mail and older correspondence and media reports indicate that, at various times, there have been suggestions by KPBS staff members that all of the individuals who appear on the *Editors Roundtable* radio program should also appear on the television program. However, Bob Kittle has vigorously protested televising another editor who does not appear regularly on *Editors Roundtable* with himself, John Warren, or Tim McClain. Dave Rolland, the Editor of *San Diego Citybeat*, described in a 2003 editorial how Kittle opposed Rolland’s inclusion on television broadcasts of *Editors Roundtable*.¹⁵ Kittle sent a letter to Pam Hardy, a producer at the KPBS program *These*

¹² 12 July 2006 e-mail correspondence from Carla Conner to Deborah Davis-Gillespie. See Exhibit 6.

¹³ See Exhibit 7 which contains a list of guests scheduled to appear on the televised version of *Editors Roundtable* during 2007. Bob Kittle, John Warren and Tim McClain are the only guests scheduled to appear on the televised broadcasts.

¹⁴ See http://www.kpbs.org/radio/editors_roundtable which lists guests on *Editors Roundtable* for 2007 and part of 2006.

¹⁵ See <http://sdcitybeat.com/article.php?id=999>

Days, with copies to KPBS general manager Doug Myrland, Gloria Penner, media relations manager Judith Morgan Jennings, Dan Novak, vice president of programming at Cox Communications, and San Diego State University President Stephen Weber, stating “I want you to know that I emphatically do not approve of having CityBeat on the [Editors Roundtable] program.”¹⁶

The decision to exclude certain editors from the televised version of *Editors Roundtable* was raised again in a series of KPBS e-mails in 2006. In an e-mail dated 6 March 2006 from Hank Crook, Producer of the KPBS program *These Days*, to Carla Conner, a KPBS Producer and Project Coordinator, Crook, focused on *Editors Roundtable* and stated:

While we really like having the ‘regulars,’ we think that having ‘alternative’ editors like Dave Rolland, Ruben Navarette Jr., Kent Davy, Tony Perry, Scott Lewis, Andrew Donohue, Alisa Joyce Barba, Michael Smolens, and JW August are important contributors to the show and shouldn’t be viewed as less important than the ‘regulars.’ We also think it is important to have the other editors on the show because they express different views from the regular group. Also, many of the people I just listed have become more well known and possibly more respected over the last few years at least in part because of their participation on this show.

We just want to make sure that the ‘alternate’ editors aren’t being left out on purpose. We would like to encourage Cox to think about including the ‘alternate’ editors in a few more of the TV tapings. We think it would be a mistake to only feature the ‘regular’ editors on TV because we would only be giving the viewers half of this great show.¹⁷

Ana Tintocalis, also a producer for *These Days*, responded in an e-mail dated 7 March 2007:

¹⁶ See <http://www.sdcitybeat.com/article.php?id=995>

¹⁷ 7 March 2006 e-mail correspondence from Hank Crook to Carla Conner, with cc to: Gloria Penner, Sarah Rothenfluch, Ana Tintocalis and Doug Myrland. See Exhibit 8.

[T]he Editors-TV audience has certainly grown since we've been using a variety of editors on the show. And this is because these new editors bring different perspectives and analyses. Many viewers enjoy watching the alternative editors. It would be detrimental to the show if Tim, Bob and John were the only editors featured on the televised program.¹⁸

The same day, Gloria Penner, the host of *Editors Roundtable*, replied in an e-mail to Ana Tintocalis, Hank Crook, and Carla Conner. She wrote:

[W]hen I asked Hank to review the schedule because I sensed that an every-other-week TV schedule would feature one group of editors over the other, I was thinking about providing the best and most diverse service to Cox viewers. At the time I made the request, I didn't know which group would get to be the 'TV group.' It is possible that the schedule is based on considerations other than who sits at the table. And, after all, the KPBS audience gets to hear all editors. So once we alert Cox to the limitations of an alternate week schedule, I think we should step back, leave it to them, and not request any explanation of their motivation.¹⁹

Doug Myrland was interviewed about the cancellation of *Full Focus* during a 12 September 2007 interview with Nicole Lozare for the KPBS Off Mic blog. When asked why *Full Focus* was cancelled, Myrland responded, "[B]ecause we wanted to take the resources that we were putting towards *Full Focus* and put those resources toward activities in the station that we considered to be more successful or more potentially successful."²⁰ He did not address the loss of objectivity and balance that cancellation of *Full Focus* would cause.

¹⁸ 7 March 2006 e-mail correspondence from Ana Tintocalis to Hank Crook and Carla Conner, with cc to: Gloria Penner, Sarah Rothenfluch, and Doug Myrland. See Exhibit 9.

¹⁹ 7 March 2006 e-mail correspondence from Gloria Penner to Ana Tintocalis, Hank Crook and Carla Conner. Carbon copied to: Sarah Rothenfluch and Doug Myrland. See Exhibit 10.

²⁰ Transcript of 12 September 2007 interview of Doug Myrland by Nicole Lozare for the KPBS Off Mic blog. See Exhibit 11. The audio version of the interview is available at the KPBS website: <http://www.kpbs.org/blogs/offmic/2007/09/12/kpbs-general-manager-on-aguirre-inquiries/>

IV. OBJECTIVITY AND BALANCE UNDER FEDERAL LAW

“Objectivity” and “balance” in programming are not only PBS policies. The Corporation for Public Broadcasting (“CPB”) is statutorily directed to support those objectives. The U.S. Congress established the CPB through the Public Broadcasting Corporation Act of 1967 (the “1967 Act”).²¹ The 1967 Act amended the 1934 Communications Act (the “1934 Act”). It provided for creation of a nonprofit corporation under the laws of the District of Columbia; the corporation would provide grants to public television and radio stations.

When the U.S. Congress passed The Public Telecommunications Act of 1992 (“1992 Act”), it directed the CPB to “facilitate the full development of public telecommunications in which programs of high quality, diversity, creativity, excellence, and innovation, which are obtained from diverse sources, will be made available to public telecommunications entities, with strict adherence to objectivity and balance in all programs or series of programs of a controversial nature.”²²

Pursuant to Section 19 of the 1992 Act, the CPB is to “provide reasonable opportunity for members of the public to present comments to the [CPB] Board regarding the...diversity, objectivity, and balance of public broadcasting services” and “review, on a regular basis, national public broadcasting programming for...diversity...objectivity, and balance....”²³

²¹ The Public Broadcasting Act of 1967 is codified at 47 U.S.C. Section 396.

²² 47 U.S.C. Section 396(g)(1)(A).

²³ Pub. L. 102-356

The 1934 Act and the policies of the CPB make it clear that “diversity,” “objectivity,” and “balance” all are important goals of the CPB. Although the CPB does not have direct oversight authority over public television stations such as KPBS, it has the ability to reject grant requests if its standards are not followed. Even if *Editors Roundtable* did not receive grant money from the CPB during 2006 or 2007, any attempts to apply for grants for the program could be questioned if the show did not satisfy the requirements of balance and objectivity that the CPB requires. Cancellation of *Full Focus* eliminated KPBS’ broadcast of diverse community voices and removed a valuable resource that enabled the station to maintain balance and objectivity.

V. CONCLUSION

When KPBS-TV cancelled *Full Focus*, it abrogated its obligation as a PBS member station to maintain “objectivity” and “balance” in its public affairs programming. The television station lost its only public affairs program that focuses on local events. Removal of five days a week of objective, balanced programming highlighted the problem with allowing a guest media commentator to dictate which *Editors Roundtable* guests would appear on television, which is a violation of the PBS Public Broadcasting Service Editorial Standards and Policies: “Primary responsibility for content necessarily rests with the producer because it is the producer who creates the content and is uniquely in a position to control of its elements.” Even prior to cancellation of *Full Focus*, KPBS’ tacit acquiescence to the media commentator’s demands to name the guests to appear on television allowed one member of the media to control one-sixth of the televised public affairs programming that was produced by KPBS. After cancellation of *Full Focus*, the guest media commentator appears to control 100% of the televised public affairs

programming produced by KPBS. The lack of balance and objectivity in KPBS-produced programming clearly contravenes PBS Editorial Standards and Policies. The City Attorney's Office is continuing its review and will report any additional material information discovered.